

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Rules to Ensure Reliable, Long-Term
Supplies of Natural Gas to California.

Rulemaking 04-01-025
(Filed January 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT TO CLAIM COMPENSATION**

Summary

In accordance with the schedule set forth in the June 18, 2004 "Scoping Memo and Ruling of the Assigned Commissioners for Phase I" (scoping memo), the Natural Resources Defense Council (NRDC), the Ratepayers for Affordable Clean Energy (RACE), and The Utility Reform Network (TURN) submitted their respective "Notice of Intent to Claim Compensation" (NOI) in the above-captioned proceeding.

This ruling determines that NRDC and TURN are eligible to file a claim for an award of compensation in this proceeding, and that RACE is ineligible to file a claim for an award of intervenor compensation.

Background

On January 22, 2004, the Commission opened this Order Instituting Rulemaking (R.) to examine what policies and rules need to be in place to ensure that California's residential and business consumers of natural gas have access to

reliable long-term supplies. Phase I is intended to address proposals that may require a Commission decision by the Summer of 2004.

Pub. Util. Code § 1804(a)(1) provides in pertinent part:¹

“A customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled ..., the commission may determine the procedure to be used in filing these requests.”

Since no prehearing conference was held regarding the Phase I issues, the scoping memo directed that any party seeking intervenor compensation to file a NOI with the Docket Office and to serve the NOI on the parties to this proceeding on or before July 16, 2004. TURN filed its NOI on July 15, 2004. NRDC and RACE filed their NOIs on July 16, 2004.

Eligibility Requirements

Section 1804(a)(2) provides that a NOI is to include a statement of the nature and extent of the customer's planned participation in the proceeding, and an itemized estimate of the compensation that the customer expects to request. In addition, the NOI may include a showing by the customer that participation in the proceeding would pose a significant financial hardship. If such a showing is made, the Administrative Law Judge (ALJ), in consultation with the assigned Commissioner, is to issue a preliminary ruling addressing whether the customer will be eligible for an award of compensation, and whether a showing of significant financial hardship has been made. (§ 1804(b)(1).) Since all three of the

¹ All section references are to the Public Utilities Code.

parties seeking intervenor compensation purport to make a showing that their participation would pose a significant financial hardship, this ruling addresses their eligibility for intervenor compensation.

In Decision (D.) 98-04-059 (79 CPUC2d 628) the Commission directed that if a ruling is issued as a result of the filing of a NOI, that the ALJ rule on whether the intervenor is a customer as defined in § 1802(b),² and which category of customer the intervenor represents. (79 CPUC2d at 649.) The type of customer category determines the standard of “significant financial hardship” that applies.

A. RACE

RACE’s NOI states that it “has been authorized by Lynda Arakelian, a low-income Pacific Gas & Electric customer residing [in] San Francisco, California, who is concerned about both high energy costs and highly polluting energy facilities in California, to represent her in this proceeding.”³ RACE

² A “customer” is defined in § 1802(b)(1) to mean: “(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission. (B) A representative who has been authorized by a customer. (C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.”

³ RACE’s NOI also included a “Verification” signed by Paul Fenn of RACE on July 16, 2004. The verification states: “I, Paul Fenn, am authorized to make this verification on Lynda Arakelian’s behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true. [Par.] I am making this verification on Ms. Arakelian’s behalf because, as her representative, I have unique personal knowledge of certain facts stated in the foregoing document. I declare under penalty of perjury that the foregoing is true and correct.”

believes that because of this authorization, RACE is a “customer” pursuant to § 1802(b).

The Commission noted in D.98-04-059 that “A ‘representative authorized by a customer’ connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (79 CPUC2d at 648.) Aside from RACE’s statement that RACE has been authorized by Arakelian to represent her in this proceeding, and the Verification made on Arakelian’s behalf and signed by Fenn who declares that the statements made in the NOI are true and correct, no documents supporting the arrangement between Arakelian and RACE have been included in the NOI.⁴

When RACE’s February 20, 2004 motion to intervene⁵ in this proceeding, is read in conjunction with RACE’s NOI, it is unclear whether Arakelian or other customers authorized RACE or Local Power to represent their interests. RACE stated in its motion to intervene:

“RACE is an active party in the CPUC’s electric procurement proceeding (R.01-10-024), and consists of AMAZON WATCH, BORDER POWER PLANT WORKING GROUP, ENVIRONMENTAL PROTECTION INFORMATION CENTER, GREENPEACE USA, LOCAL POWER, MARIN CLEAN ALTERNATIVE ENERGY NOW, NORTHCOAST ENVIRONMENTAL CENTER, VALLEJO COMMUNITY PLANNED RENEWAL, PACIFIC ENVIRONMENT, PUBLIC CITIZEN and others. We wish to intervene in R.04-01-023 as a

⁴ The cover page of RACE’s NOI and its February 20, 2004 motion to intervene list Fenn of Local Power as “representing” RACE.

⁵ RACE’s motion to intervene was granted in the ALJs’ ruling of March 18, 2004.

coalition so that the Commission can understand our unique perspective, and wish to assure that Commission that [sic] we will be speaking through a single pleading that represents the views of all members of the coalition.

“RACE members represent the economic, ecological and environmental justice interests of small ratepayers, particularly under-represented low and fixed income residential ratepayers, as well as other vulnerable customer interests. RACE seeks to protect these customers from policy changes that would result in economic, ecological hardships, threats to security and safety, cancer, asthma, climate change, as well as future natural gas and electricity price volatility and indebtedness resulting from authorizing utility over-procurement of Liquefied Natural Gas (LNG) at ratepayer risk and expense. In this proceeding, RACE seeks to represent the interests of these same customers, that may otherwise not be represented, even though small ratepayers and low-and fixed-income residential ratepayers represent a majority of California utility customers.”
(RACE, Motion to Intervene, p. 2, emphasis added.)

Based on the motion to intervene, it appears that Arakelian or other customers did not seek out and authorize RACE or Local Power to represent their interests. Rather, it appears that RACE, and its coalition members, sought to participate in this proceeding on behalf of its constituent members. Except for the Verification, which has been signed by Fenn supposedly on Arakelian’s behalf, there is nothing to show that Arakelian authorized RACE or Local Power to be her representative. In addition, RACE’s NOI and the motion to intervene identify Fenn of Local Power as the representative of RACE. There are no documents that Arakelian authorized Local Power to be her representative. Accordingly, RACE’s NOI and its motion to intervene fail to establish that RACE qualifies as a “customer” who has been authorized by a customer to be its representative.

Although this ruling determines that RACE is not a customer, the second reason for concluding that RACE is ineligible for an award of intervenor compensation is because RACE has failed to make a sufficient showing about significant financial hardship.⁶

RACE made the following statements in its NOI regarding the significant financial hardship that Arakelian would face:

“... Lynda Arakelian, a PG&E customer who has authorized RACE to represent her in this proceeding, cannot afford, without undue hardship, to pay the cost of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation; thus RACE’s participation or intervention without an award of fees or costs would impose a ‘significant financial hardship’ as defined in 1802(g) of the Public Utilities Code, qualifying RACE to receive compensation from the Commission for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in R.04-01-025 as outlined in 1803(b) of the Public Utilities Code, provided that RACE’s presentation makes a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.” (RACE, NOI, pp. 6-7.)

For a representative authorized by a customer, which RACE contends that it is, the significant financial hardship is determined by the “cannot afford to pay” standard. (79 CPUC2d at 650.) That means for “a representative authorized by a customer, we expect the representative to provide the financial information of the customer who authorized him to serve in a representative capacity.” (*Id.*, at 651.) RACE failed to include in its NOI any of Arakelian’s

⁶ Section 1804(a)(2)(B) provides that the NOI “may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship.”

pertinent financial information to support RACE's claim that it would be a significant financial hardship on Arakelian to participate in this proceeding.

A third reason for denying RACE's eligibility for intervenor compensation is that RACE failed to serve the NOI on the assigned ALJs, and possibly on others as well.⁷ Section 1804(a)(1) states, and the scoping memo directed, that the NOI be served on all parties to this proceeding. Despite the signed "Certificate of Service" attached to RACE's NOI, wherein Julia Peters of Local Power stated that she served a copy of RACE's NOI on all known parties in this proceeding by either electronic mail or first class mail, neither of the ALJs was served with the NOI.

As discussed above, RACE has not complied with the intervenor compensation statutes, decisions, and rulings. Accordingly, RACE is ineligible to claim intervenor compensation in this proceeding.

B. NRDC

NRDC states that it falls within the third category of customer as listed in § 1802(b), i.e., as a "representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...." NRDC attached the relevant section of its bylaws which states that "Individual Membership in the Corporation shall constitute an authorization for the Corporation to represent member's interests, in regulatory and judicial proceedings within the scope of the activities of the Corporation."

⁷ If RACE failed to serve its NOI on others, these other parties would not have received notice about the filing, and would not have been provided with the opportunity to respond to RACE's NOI.

(NRDC NOI, Att. 1.) NRDC meets the definition of customer as defined in § 1802(b)(1)(C).

In satisfaction of the requirement in § 1804(a)(2)(B) that the NOI “may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship,” NRDC included information about significant financial hardship in its NOI.

For an entity who seeks eligibility as a customer under § 1802(b)(1)(C), an organization authorized by its bylaws, it may use a “comparison” test in which the cost of participation is compared to the economic interest of the individual members of the organization in order to determine whether there will be significant financial hardship. (79 CPUC2d at pp. 650-652.)

Section 1804(b)(1) provides in pertinent part:

“A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.”

NRDC received a finding of significant financial hardship in a March 7, 2003 ALJ ruling in Application (A.) 02-12-027 and A.02-12-028. Since this proceeding was initiated within one year of the finding in the March 7, 2003 ruling, the previous finding creates a rebuttable presumption of eligibility for compensation in this proceeding. No one responded to NRDC’s NOI to rebut the presumption of eligibility. Accordingly, NRDC is presumed to be eligible for compensation in this proceeding.

The other requirements to address are the nature and extent of the customer’s planned participation in the proceeding, and the estimate of compensation the customer expects to request.

NRDC states that it has a “long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy requires,” and that its focus is to represent its “California members’ interest in the utility industry’s delivery of cost-effective energy efficiency programs, renewable energy resources and other sustainable energy alternatives.” (NRDC, NOI, p. 3.) NRDC intends to be an active participant in all phases of this proceeding.

NRDC has provided an itemized estimate of the compensation that it expects to request. NRDC currently estimates a total budget of \$26,500.

Section 1801.3(f) recognizes that the intervenor compensation provisions are to be “administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented....”

NRDC states that the “interests of the customers represented by NRDC are unique and are not adequately represented by other parties that have intervened in the case.” (NRDC, NOI, p. 4.) To avoid duplication with other parties, NRDC states that it will coordinate its participation with other parties to the extent possible.

The planned participation of NRDC in this proceeding should allow for the effective and efficient participation of all groups that have a stake in this proceeding, and their coordination with other parties should avoid unproductive or unnecessary participation that duplicates the efforts of other parties with similar interests.

NRDC is eligible for an award of compensation in this proceeding. This finding of eligibility does not mean that NRDC is automatically entitled to intervenor compensation. Pursuant to § 1804, NRDC must make a substantial

contribution to the Commission decision before it is awarded any intervenor compensation.

C. TURN

Footnote 1 of TURN's NOI states that it is a "group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers." TURN has previously submitted the relevant portion of its articles of incorporation in other Commission proceedings. TURN meets the definition of customer as defined in § 1802(b)(1)(C).

TURN also included information in its NOI about significant financial hardship. The comparison test, in which the cost of participation is compared to the economic interest of the individual members of the organization in order to determine whether there will be significant financial hardship, applies to TURN because it is a customer who is an organization authorized by its bylaws to represent the interests of residential customers.

TURN has also elected to rely on the rebuttable presumption in § 1804(b)(1) to make its showing of significant financial hardship in this proceeding. TURN states that a finding of significant financial hardship was made in R.02-07-050 in a March 25, 2003 ruling. Since this proceeding was initiated within one year of that finding, and because no one responded to TURN's NOI to rebut the presumption of eligibility, TURN is presumed to be eligible for compensation in this proceeding.

Regarding the requirement about the nature and extent of the customer's planned participation in this proceeding, TURN states that it "intends to participate on issues concerning utility planning and contracting for core interstate pipeline capacity, ratemaking impacts of policies concerning interconnection with future LNG facilities, policies and criteria related to

infrastructure investments for gas reliability, and any other issues that will affect core ratepayer interests in this proceeding.” (TURN, NOI, p. 2.)

To satisfy the requirement that the NOI include an estimate of the compensation the customer expects to request, TURN provided an itemized estimate of the compensation that it expects to request assuming that testimony and evidentiary hearings will be required at some point in this proceeding. TURN estimates its total compensation at \$61,900.

To satisfy the statement in § 1801.3(f) about unproductive or unnecessary participation, TURN’s NOI states that although the Office of Ratepayer Advocates (ORA) represents the interests of all ratepayers, TURN is the only party representing the interests of residential and small commercial customers. TURN also states that it will coordinate with ORA and other intervenors to minimize the duplication of effort.

The planned participation of TURN in this proceeding should allow for the effective and efficient participation of all groups that have a stake in this proceeding, and their coordination with other parties should avoid unproductive or unnecessary participation that duplicates the efforts of other parties with similar interests.

TURN is eligible for an award of compensation in this proceeding. This finding of eligibility does not mean that TURN is automatically entitled to intervenor compensation. Pursuant to § 1804, TURN must make a substantial contribution to the Commission decision before it is awarded any intervenor compensation.

Therefore, **IT IS RULED** that:

1. The Ratepayers for Affordable Clean Energy has not met the eligibility requirements of § 1804, and is therefore ineligible to file a claim for an award of compensation in this proceeding.

2. The Natural Resources Defense Council (NRDC) has met the eligibility requirements of § 1804, including the requirement that it establish significant financial hardship.

NRDC is eligible to file a claim for an award of compensation in this proceeding.

3. The Utility Reform Network (TURN) has met the eligibility requirements of § 1804, including the requirement that it establish significant financial hardship.

TURN is eligible to file a claim for an award of compensation in this proceeding.

Dated August 24, 2004, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 24, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.